

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>STANLEY N. MAYBERRY,</b>	)	
	)	
<b>Petitioner/Defendant,</b>	)	
	)	<b>CIVIL NO. 02-CV-316-DRH</b>
<b>vs.</b>	)	
	)	<b>CRIMINAL NO. 99-CR-30022-15-DRH</b>
<b>UNITED STATES of AMERICA ,</b>	)	
	)	
<b>Respondent/Plaintiff.</b>	)	

**MEMORANDUM AND ORDER**

**HERNDON, District Judge:**

Petitioner has moved the Court for issuance of a certificate of appealability (Doc. 9) and for leave to proceed *in forma pauperis* on appeal (Doc. 8). Because different standards apply to these two motions, the Court separately analyzes them.

28 U.S.C. § 2253(c)(1) provides that an appeal “may not be taken” from a final order in a Section 2255 proceeding unless a certificate of appealability first is issued. Similarly, Federal Rules of Appellate Procedure 22(b)(1) requires: “in a ... § 2255 proceeding, the applicant cannot take an appeal unless . . . a circuit or district judge issues a certificate of appealability....” 28 U.S.C. § 2253(c)(1). 28 U.S.C. § 2253(c)(2) clarifies that a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.”

Petitioner’s motion for issuance of a certificate of appealability argues that the Court erred in denying his Rule 60(b) motion for lack of jurisdiction (*see* Docs. 6, 7). However, he has not made a substantial showing of the denial of any constitutional right. According, Petitioner’s motion for issuance of a certificate of appealability is **DENIED**.

The Court now turns to Petitioner's motion for leave to proceed *in forma pauperis* on appeal. "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). An appellant is "acting in bad faith in the more common legal meaning of the term . . . [when he sues] . . . on the basis of a frivolous claim, which is to say a claim that no reasonable person could suppose to have any merit." *Lee v. Clinton*, 209 F.3d 1025, 1026 (7<sup>th</sup> Cir. 2000).

The Court denied Petitioner's motion under § 2255 and now denied his request for issuance of a certificate of appealability. Petitioner has offered no viable argument indicating why this Court's conclusion was incorrect. Therefore, the Court **CERTIFIES** that this appeal is not taken in good faith; accordingly, leave to proceed *in forma pauperis* on appeal is **DENIED**. Petitioner shall tender the appellate filing and docketing fee of \$255 to the Clerk of Court in this District, or he may reapply to the Seventh Circuit Court of Appeals for leave to proceed *in forma pauperis* on appeal.

**IT IS SO ORDERED.**

**DATED: June 15, 2005**

/s/ David RHerndon  
**DISTRICT JUDGE**